IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 284 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VADHWAN MAHAJAN PANJARAPOLE

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 284 of 1998

MR SP HASURKAR for Petitioner

Mr.K.C.Shah, A.P.P. for Respondent No. 1

MR AR SHAIKH for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 05/09/2000

ORAL JUDGEMENT

1. List has been revised thrice, none appeared for the revisionist. Shri K.C.Shah, learned A.P.P. for the respondent No.1 and Shri A.R.Shaikh, learned Counsel for

the respondent No.2 have been heard and the impugned order has been examined.

2. It appears from the impugned order that 17 calves were seized and inquiry and investigation under Section 35(2) of the Prevention of Cruelty to Animals Act, 1960 was initiated against the respondent No.2. The respondent No.2 claiming to be the owner of the cattle claimed interim custody. Application for interim custody was rejected by the Chief Judicial Magistrate, Surendranagar through his order dated 13.4.1998, and the calves were given in the custody of Vadhwan Mahajan Panjarapole, Vadhawan, a Charitable Trust registered under the Bombay Public Trust Act. This Panjarapole is revisionist before me. Feeling aggrieved the respondent No.2 herein approached the Sessions Judge, Surendranagar, who set aside the order of the Chief Judicial Magistrate, Surendranager and directed that the cattle be given in the interim custody of respondent No.2 on certain conditions. It is against this order of the Sessions Judge that the instant revision has been filed by the revisionist Panjarapole.

3. Section 451 of the Cr. P.C. provides for interim custody in such cases. It provides that when any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial.

4. Section 35(2) of the Prevention of Cruelty to Animal Act is a special legislation. The question is whether when cattle are seized whether the Magistrate is bound to deliver its custody to the Panjarapole and not to the person who is claiming to be the owner of the same. This matter was considered by the Apex Court in Manager, Panjarapole, Deodar v/s. Chakaram Morarji Nat, reported in 1999 (1) SCC 587. The Apex Court in this case has laid down that the Magistrate has discretion to give interim custody of the Animal to Panjarapole. However, considering the material part of sub.Section 2 of S.35 of the Act the Apex Court held that the Magistrate may direct that the animal concern shall be sent to a Panjarapole. According to the Apex Court sub.section 2 does not say that the Magistrate shall send the animal to Panjarapole. The ward "shall send" under Section 35(2) was considered to be a part of discretion given to the Magistrate if in his discretion he decides to give interim custody to Panjarapole. The Magistrate has discretion to hand over interim custody of the animal to Panjarapole, but he is not bound to hand over custody

of animal to Panjarapole in the event of not sending it to an infirmary. In a case where the owner is claiming the custody of the animal Panjarapole has no preferential right. Thus, when the rival claims of Panjarapole and the real owner to the interim custody of the animal are considered the Panjarapole can not claim preferential right of interim custody, in view of this verdict of the Apex Court. In such matters the custody of the animal is given to the owner who is facing prosecution, for which certain guidelines have been laid down by the Apex Court in this case. These guidelines are as under :

(1) The court shall consider the nature and gravity of the offence alleged against the owner;
(2) It shall consider whether it is the first offence alleged or he has been found guilty of offences under the Act earlier;
(3) If the owner is facing the first prosecution under the Act and the animal is not liable to be seized so the owner will have a better claim for the custody of the animal during the prosecution;
(4) The condition in which the animal was found at the time of inspection and seizure is also to be considered by the Court;
(5) The Court has also to consider the possibility of the animal being again subjected to cruelty.

5. If these guidelines are to be kept in mind it is clear that according to Shri Shaikh this is the first offence committed by the respondent No.2. There is no material to the contrary on record. There is also no possibility that the animal will be subjected to cruelty, The Sessions Judge in the impugned order, while exercising discretion, has specifically directed that no cruelty shall be practised towards the cattle, namely, calves which were given in the interim custody of the respondent No.2. Thus, the possibility of cattle being again subjected to cruelty stands ruled out in view of this direction of the learned Sessions Judge. It is also not a case where the respondent No.2 has committed such offence earlier.

6. Learned Judge has exercised discretion in a judicial manner and it cannot be said to be a case of arbitrary exercise of jurisdiction. He has directed that the cattle shall be produced by the respondent No.2 before the Court at the time of trial. He has also ordered that the cattle shall not be sold or transferred or removed by the respondent No.2. Cruelty towards cattle has also been prohibited under the impugned order of the learned Sessions Judge. He has also directed that

the respondent No.2 shall properly maintain the calves which are given in his interim custody and lastly he has demanded one surety in the amount of Rs.10,000/- and a personal bond in the like sum from the respondent No.2.

7. In face of these directions given by the learned Sessions Judge I do not find any ground for interference in this Revision. The Re

sd/-

Date : September 05, 2000 (D. C. Srivastava, J.)

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